

At the 5/8/19 Council meeting,
CR-147 and
Bill 89 (2018), Proposed CD2
were referred to the
Committee on Zoning, Planning & Housing

REPORT OF THE COMMITTEE ON PLANNING

Voting Members:

Ikaika Anderson, Chair; Heidi Tsuneyoshi, Vice-Chair;
Michael Formby, Carol Fukunaga, Joey Manahan, Kymberly Marcos Pine

Committee Meeting Held
April 29, 2019

Honorable Ann H. Kobayashi
Interim Chair, City Council
City and County of Honolulu

Madam Chair:

Your Committee on Planning, to which was referred Bill 89 (2018), CD1 entitled:

"A BILL FOR AN ORDINANCE RELATING TO SHORT-TERM RENTALS,"

which passed Second Reading on and was the subject of a Public Hearing held at the Council's meeting of April 17, 2019, reports as follows:

The purpose of Bill 89 (2018), CD1 is to amend the Land Use Ordinance ("LUO"), Chapter 21, Revised Ordinances of Honolulu 1990, to better regulate short-term rentals. The Department of Planning and Permitting ("DPP") offered this proposal on its own initiative as a revised alternative to four Council-initiated proposals relating to short-term rentals.

Your Committee finds that the Planning Commission, after a public hearing held on October 31, 2018, at which oral and written public testimony was received on the proposed LUO amendment, voted to recommend approval of the proposal in concurrence with the recommendation of the DPP in the Attachment to Mayor's Message 152 (2018). The Planning Commission also recommended certain amendments to the proposal.

Your Committee finds that at a public hearing held on April 17, 2019 by the City Council, oral and written public testimony was received on the proposed LUO amendment.

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON _____

COMMITTEE REPORT NO. 147

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In Committee Report No. 69, which the Council adopted at its meeting on April 17, 2019, your Committee set forth background information on the subject bill.

At your Committee's meeting on April 23, 2019, action on the bill was postponed to further work on the measure.

At your Committee's meeting April 23, 2019, your Committee considered Bill 89 (2018), CD1 and Bill 85 (2018), CD1 together. Bill 85 (2018), CD1 is a Council-initiated short-term rental proposal. The DPP Acting Director testified that the DPP has generally reviewed the proposed CD2 drafts of Bill 89 (2018) that were being considered by the Committee, and supports many of proposed amendments. The DPP Acting Director suggested additional amendments to the bill.

At your Committee's meeting on April 29, 2019, The Hawaii Appleseed Center for Law and Economic Justice, Unite Here Local 5, and eight individuals testified in support of the bill. The Lanikai Community Association, and 18 individuals testified in opposition to the bill. The American Hotel and Lodging Association, Owners and Residents of Waikiki's Apartment District, State Senator Gil Rivere, and 12 individuals offered comments on the bill.

Your Committee received written testimony in support of the bill from Hawaii Lodging and Tourism Association, Honolulu Board of Realtors, Char Hung Sut, Royal Kitchen, McCandless Honolulu, Makua Land Company, and 21 individuals. Written testimony in opposition to the bill was received from Oahu Alternative Lodging Association, Housing for Residents, and 642 individuals. Sunset Point Residents, Owners and Residents of Waikiki Apartment District, and 21 individuals submitted comments on the bill.

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After convening into executive session, your Committee has prepared a CD2 version of the bill, which makes the following amendments:

- A. Amends the language in the "Findings and Purpose" clause in SECTION 1 of the bill to reflect the nonexpansion of TVU operations and to delete references to real property tax classifications.
- B. Adds a new SECTION 4 to the bill, to add a proposed new Section 21-2.150-4 providing that a neighbor may institute a civil action in any court of competent jurisdiction against any person for violation of the provisions of the LUO pertaining to bed and breakfast homes and transient vacation units.
- C. Adds a new SECTION 5 to the bill, to add a proposed new Section 21-2.150-5 relating to the use of fines recovered for violations of ordinances dealing with TVUs and B&Bs. Renumbers subsequent SECTIONS accordingly.
- D. In renumbered SECTION 9 of the bill, amends proposed new ROH Section 21-5.__(b) to exclude from the standards and requirements, bed and breakfast homes in the apartment precinct of the Waikiki special district. Also adds the apartment precinct to the areas excluded in calculating the development plan area density limit and subject to the multifamily dwelling density limit.
- E. In renumbered SECTION 9 of the bill, adds a new ROH Section 21-5.__(b)(1)(K) to require evidence that a dwelling unit proposed for use as a bed and breakfast home: (1) is not an affordable unit subject to income restrictions; (2) did not receive housing or rental assistance subsidies; and (3) was not subject to an eviction within the last 12 months.

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- F. In renumbered SECTION 9 of the bill, amends proposed new ROH Section 21-5.__(b)(1), 21-5.__(b)(2), and 21-5.__(b)(3) to delete references to a bed and breakfast home that will be occupied by transient residents for more than 30 days per calendar year (the subsection will apply to all bed and breakfast homes, regardless of the number of days per calendar year they are occupied by transient residents).
- G. In renumbered SECTION 9 of the bill, amends proposed new ROH Section 21-5.__(b)(3)(A) to clarify that detached dwellings used as bed and breakfast homes must be occupied by a family, and renters of any room in the detached dwelling other than the bed and breakfast home guests are not permitted.
- H. In renumbered SECTION 9 of the bill, amends proposed new ROH Section 21-5.__(b)(3)(I) to reduce the development plan area density limit to one half of one percent of the total number of dwelling units in that development plan area (instead of one percent).
- I. In renumbered SECTION 9 of the bill, adds a new ROH Section 21-5.__(b)(3)(L) to provide that a bed and breakfast home must not be located within 1,000 feet of another bed and breakfast home or a transient vacation unit, subject to exclusions from the spacing requirement (1) as between bed and breakfast homes located in the zoning districts subject to the new comprehensive standards and requirements and short-term rentals located in zoning districts and precincts not subject to the such standards and requirements, and (2) for bed and breakfast homes operating under valid nonconforming use certificates.

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- J. In renumbered SECTION 9 of the bill, deletes new ROH Section 21-5.__(b)(4), which provided for the registration of limited short-term rentals (dwelling units to be used as bed and breakfast homes for less than 30 calendar days per year). Renumbers subsequent subdivisions accordingly
- K. In renumbered SECTION 9 of the bill, amends proposed new ROH Section 21-5.__(c)(2)(A)(ii) to provide that bed and breakfast homes or transient vacation units located in the apartment precinct of the Waikiki special district must list the street address for that bed and breakfast home or transient vacation unit in all advertisements.
- L. In renumbered SECTION 12 of the bill, amends footnote 7 so that the exclusion also applies to bed and breakfast homes in the apartment precinct of the Waikiki special district.
- M. In renumbered SECTION 14 of the bill, relating to the regulation of hosting platforms, deletes and replaces all sections except for proposed new Section 41-__.1 ("Definitions").
- N. Makes miscellaneous technical and nonsubstantive amendments.

Your Committee finds that the bill, as amended herein, carries out the purpose of the General Plan and Development Plans of the City and is in the best interests of the people of the City and County of Honolulu.

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Your Committee on Planning is in accord with the intent and purpose of Bill 89 (2018), CD1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as Bill 89 (2018), CD2. (Ayes: Anderson, Formby, Fukunaga, Tsuneyoshi – 4; Ayes with reservations: Pine - 1; Noes: None; Excused: Manahan -1.)

Respectfully submitted,



Committee Chair

At the 5/8/19 Council meeting, CR-147 and Bill 89 (2018), CD2 were referred to the Committee on Zoning, Planning and Housing.

CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ADOPTED ON _____

COMMITTEE REPORT NO. 147



A BILL FOR AN ORDINANCE

RELATING TO SHORT-TERM RENTALS.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Findings and Purpose. The purpose of this ordinance is to better regulate short-term rentals. Short-term rentals, which are the use of residential dwellings for stays of less than 30 days, have grown significantly since being first regulated by the City in 1989. The use of social media has increased opportunities for visitors to consider short-term rentals during their stay on Oahu. Based on on-line advertising, there are an estimated 8,000 to 10,000 short-term rentals available at any given time on Oahu, far exceeding the number of permitted units as currently provided under the Land Use Ordinance. Current Land Use Ordinance enforcement tools are outdated and not effective in regulating the expanding short-term rental industry, particularly with respect to social media advertising and online booking services. In addition, the hotel industry, while not opposed to short-term rentals, takes the position that requirements imposed on hotels should equally apply to short-term rentals. Short-term rentals are currently classified as "residential" for real property tax purposes. The high rents that may be charged for short-term rentals, which may be as much as \$8,000 per night, result in an imbalance in real property tax policy.

Short-term rentals represent economic benefits to the City and State in terms of jobs, tax revenues, and diversification of the visitor accommodations industry. For some residents, short-term rentals are viewed as important supplemental income, serving as sources of revenue, and enabling homeowners to qualify for mortgages. Some residents pride themselves on being sensitive landlords or hosts, serving as "ambassadors of aloha." Many residents desire to use the dwelling for their own use for portions of the year, so they are not able to offer the dwelling for rental on a long-term basis.

However, neighborhoods may be negatively impacted by the presence of short-term rentals, including escalating real property values, increased noise, illegal parking, and increased traffic. There is a concern that homes are being purchased as income-producing investments rather than for domiciliary purposes. Residents are generally comfortable with bed and breakfast homes because an on-site resident manager or owner is responsible for the bed and breakfast home, and can respond to any problems associated with short-term guests. In contrast, residents generally voice strong concerns about "unhosted" transient vacation units, particularly when a significant number of transient vacation units are located in the same neighborhood. Significant numbers of absentee owners and constant change in occupancy may change the social patterns of neighborhoods and reduce interactions among neighbors, resulting in a decline in the quality of life for residents.



CITY COUNCIL
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ORDINANCE _____

BILL **89 (2018), CD2**

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This ordinance is intended to balance competing views associated with short-term rentals. It continues to differentiate between bed and breakfast homes and transient vacation units, and provides a registration system to allow bed and breakfast homes to operate under express regulatory standards and requirements, which will be monitored through an annual registration renewal process. This ordinance also includes significant penalties for illegally operating a short-term rental, and for advertising an illegal short-term rental. In addition, this ordinance regulates hosting platforms by requiring them to exercise reasonable care to confirm that a bed and breakfast home or transient vacation unit is being legally operated at the time the booking services are provided.

SECTION 2. Section 8-10.5, Revised Ordinances of Honolulu 1990 ("Home, lease, lessees defined"), is amended by amending subsection (b) to read as follows:

"(b) The subletting by the taxpayer of not more than ~~[one room]~~ two rooms to a tenant shall not affect the exemption provided for by Section 8-10.4."

SECTION 3. Section 21-2.150-2, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 21-2.150-2 Administrative enforcement.

(a) In lieu of or in addition to enforcement pursuant to Section 21-2.150-1, if the director determines that any person is violating any provision of this chapter, any rule adopted thereunder or any permit issued pursuant thereto, the director may have the person served, by registered or certified mail, restricted delivery, return receipt requested, or by hand delivery with a written notice of violation and order pursuant to this section. However, if the whereabouts of such person is unknown and cannot be ascertained by the director in the exercise of reasonable diligence and the director provides an affidavit to that effect, then a notice of violation and order may be served by publication once each week for two consecutive weeks in a daily or weekly publication in the city pursuant to HRS Section 1-28.5.

~~((a))~~(b) Contents of the Notice of Violation. The notice must include at least the following information:

- (1) Date of the notice;
- (2) The name and address of the person noticed;



A BILL FOR AN ORDINANCE

- (3) The section number of the provision or rule, or the number of the permit that has been violated;
- (4) The nature of the violation; and
- (5) The location and time of the violation.

~~[(b)]~~(c) Contents of Order.

- (1) The order may require the person to do any or all of the following:
 - (A) Cease and desist from the violation;
 - (B) Correct the violation at the person's own expense before a date specified in the order;
 - (C) Pay a civil fine not to exceed ~~[\$1,000.00]~~ \$1,000 in the manner, at the place and before the date specified in the order; and
 - (D) Pay a civil fine not to exceed ~~[\$1,000]~~ \$5,000 per day for each day in which the violation persists, in the manner and at the time and place specified in the order.
- (2) Notwithstanding the civil fines specified in subdivision (1)(C) and (D), if the violation is a recurring violation of any provision of this chapter relating to the requirements for transient vacation units or bed and breakfast homes, then, in addition to requirements in subdivision (1)(A) and (B), the order may require a person to do any or all of the following:
 - (A) For the first recurring violation:
 - (i) Pay a civil fine of \$10,000 in the manner, at the place, and before the date specified in the order; and
 - (ii) Pay a civil fine of \$10,000 for each day in which the violation persists, in the manner and at the time and place specified in the order.
 - (B) For the second recurring violation:
 - (i) Pay a civil fine of \$20,000 in the manner, at the place, and before the date specified in the order; and



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(ii) Pay a civil fine of \$20,000 for each day in which the violation persists, in the manner and at the time and place specified in the order.

(C) For the third recurring violation and each recurring violation thereafter:

(i) Pay a civil fine of \$50,000 in the manner, at the place, and before the date specified in the order; and

(ii) Pay a civil fine of \$50,000 for each day in which the violation persists, in the manner and at the time and place specified in the order.

The director may not negotiate any reduction in the fines imposed under this subdivision.

~~[(2)]~~(3) The order must advise the person that the order will become final 30 days after the date of its mailing or delivery. The order must also advise that the director's action may be appealed to the zoning board of appeals.

~~[(e)]~~(d) Effect of Order--Right to Appeal. The provisions of the order issued by the director under this section will become final 30 days after the date of the mailing or delivery of the order. The person may appeal the order to the zoning board of appeals as provided in Charter Section 6-1516 ~~[of the city charter]~~. However, an appeal to the zoning board of appeals will not stay any provision of the order.

~~[(d)]~~(e) Judicial Enforcement of Order. The director may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section. Where the civil action has been instituted to enforce the civil fine imposed by said order, the director need only show that the notice of violation and order were served, that a civil fine was imposed, the amount of the civil fine imposed and that the fine imposed has not been paid.

(f) Notwithstanding any other provision to the contrary, in addition to daily civil fines, the director may impose a fine in an amount equal to the total sum received by the owner, operator, or proprietor of a bed and breakfast home or transient vacation unit from any impermissible rental activity during the period in which the owner, operator, or proprietor was subject to daily fines.

(g) Nothing in this section shall preclude the director from seeking any other remedy available by law."



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SECTION 4. Chapter 21, Article 2, Revised Ordinances of Honolulu 1990, is amended by adding a new Section 21-2.150-4 to read as follows:

"Sec. 21-2.150-4 Private right of action.

A neighbor may institute a civil action in any court of competent jurisdiction against any person for violation of the provisions of this chapter pertaining to bed and breakfast homes and transient vacation units and shall be entitled to all remedies available under the law or in equity appropriate to remedy any such violation, including but not limited to a fine equal to the gross amount paid by a customer to rent a bed and breakfast home or transient vacation unit, which shall be doubled if the violation is shown to be willful. The department and the zoning board of appeals do not have special competence in or primary jurisdiction over such violations and the neighbor is not required to exhaust any administrative procedures before instituting action. If the neighbor is the prevailing party in any legal action taken pursuant to this section, the court shall award reasonable attorneys' fees and costs as part of the costs recoverable. Any fine which has not been satisfied in full within 90 days and has not been successfully challenged by a timely writ of mandate shall constitute a lien against the real property as to which the violation occurred and may be recorded; provided that no such lien shall be imposed if the owner of the property did not commit a violation of this chapter in connection with the rental and the owner establishes that all phases of the rental, including advertising, offer and exchange, took place without the owner's knowledge. Due to the special competence of the department in investigating and remedying violations of this chapter, no action under this section may be brought until six months after the neighbor has filed a complaint with the department against the person alleged to be in violation of the provisions of this chapter pertaining to bed and breakfast homes and transient vacation units."

SECTION 5. Chapter 21, Article 2, Revised Ordinances of Honolulu 1990, is amended by adding a new Section 21-2.150-5 to read as follows:

"Sec. 21-2.150-5 Depository of fees and civil penalties relating to bed and breakfast homes or transient vacation units.

Notwithstanding any other ordinance to the contrary, payments of fees and civil penalties relating to bed and breakfast homes or transient vacation units shall be deposited into a special account of the general fund, to be appropriately named by the department of budget and fiscal services, and used for expenses related to the enforcement by the department of the provisions of this chapter relating to bed and breakfast homes and transient vacation units."



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SECTION 6. Table 21-3, Revised Ordinances of Honolulu 1990 ("Master Use Table"), is amended by amending the "Dwellings and Lodgings" category to add a "bed and breakfast homes" entry and revise the "transient vacation units" entry to read as follows:

**"TABLE 21-3
MASTER USE TABLE**

In the event of any conflict between the text of this Chapter and the following table, the text of the Chapter shall control. The following table is not intended to cover the Waikiki Special District; please refer to Table 21-9.6(A).

KEY: Ac = Special accessory use subject to standards in Article 5
Cm = Conditional Use Permit-minor subject to standards in Article 5; no public hearing required (see Article 2 for exceptions)
C = Conditional Use Permit-major subject to standards in Article 5; public hearing required
P = Permitted use
P/c = Permitted use subject to standards in Article 5
PRU = Plan Review Use

ZONING DISTRICTS																					
USES (Note: Certain uses are defined in Article 10.)	P-2	AG-1	AG-2	Country	R-20, R-10	R-7.5, R-5, R-3.5	A-1	A-2	A-3	AMX-1	AMX-2	AMX-3	Resort	B-1	B-2	BMX-3	BMX-4	I-1	I-2	I-3	IMX-1
DWELLINGS AND LODGINGS																					
<u>Bed and breakfast homes</u>			<u>P/c</u>	<u>P/c</u>	<u>P/c</u>	<u>P/c</u>	<u>P/c</u>	<u>P/c</u>	<u>P/c</u>	<u>P/c</u>	<u>P/c</u>	<u>P/c</u>	<u>P/c</u>			<u>P/c</u>	<u>P/c</u>				
Transient vacation units								<u>P/c</u>					<u>(P)</u> <u>P/c</u>								



A BILL FOR AN ORDINANCE

SECTION 7. Section 21-4.110-1, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 21-4.110-1 Nonconforming use certificates for transient vacation units.

(a) The purpose of this section is to ~~[treat]~~ permit certain transient vacation units ~~[which] that~~ have been in operation since prior to October 22, 1986, ~~[as nonconforming uses and to allow them]~~ to continue to operate as nonconforming uses subject to obtaining a nonconforming use certificate as provided by this section. This section applies to any owner, operator, or proprietor of a transient vacation unit who holds a valid nonconforming use certificate issued pursuant to this section on the effective date of this ordinance.

~~[(b)]~~ The owner, operator, or proprietor of any transient vacation unit which is operating in an area where such use is not expressly permitted by this chapter shall, within nine months of December 28, 1989, establish to the satisfaction of the director that the use was in existence prior to October 22, 1986 and has continued through December 28, 1989, or shall cease its operation. The owner, operator, or proprietor shall have the burden of proof in establishing that the use is nonconforming. Documentation substantiating existence may include records of occupancy or tax documents, such as State of Hawaii general excise tax records, transient accommodations tax records, and federal and/or State of Hawaii income tax returns, for the years 1986 to 1989. Upon a determination that the use was in existence prior to October 22, 1986 and has continued through December 28, 1989, the director shall issue a nonconforming use certificate for the transient vacation unit.

~~[(c)]~~ Failure to obtain a nonconforming use certificate within nine months of December 28, 1989 shall mean that the alleged nonconforming use, as of December 28, 1989, is not a bona fide nonconforming use, and shall not continue as a nonconforming use but shall be treated as an illegal use.]

~~[(d)]~~(b) The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate in accordance with the following schedule:

- (1) between September 1, 2000 and October 15, 2000; then
- (2) between September 1 and October 15 of every even-numbered year thereafter.



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Each application to renew shall include proof that (i) there were in effect a State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming use during each calendar year covered by the nonconforming use certificate being renewed and that there were transient occupancies (occupancies of less than 30 days apiece) for a total of at least 35 days during each such year and that (ii) there has been no period of 12 consecutive months during the period covered by the nonconforming use certificate being renewed without a transient occupancy. Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificate. The requirement for the 35 days of transient occupancies shall be effective on January 1, 1995 and shall apply to renewal applications submitted on or after January 1, 1996.

~~[(e)]~~(c) The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section shall display the certificate issued for the current year in a conspicuous place on the premises. In the event that a single address is associated with numerous nonconforming use certificates, a listing of all units at that address holding current certificates may be displayed in a conspicuous common area instead.

(d) The provisions of Section 21-5. (c) shall apply to advertisements for transient vacation units operating under a nonconforming use certificate pursuant to this section.

SECTION 8. Section 21-4.110-2, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 21-4.110-2 Bed and breakfast homes--Nonconforming use certificates.

(a) The purpose of this section is to ~~[prohibit bed and breakfast homes, while permitting]~~ permit certain bed and breakfast homes ~~[which]~~ that have been in operation since prior to December 28, 1989, to continue to operate as nonconforming uses subject to obtaining a nonconforming use certificate as provided by this section. This section applies to any owner, operator, or proprietor of a bed and breakfast home who holds a valid nonconforming use certificate issued pursuant to this section on the effective date of this ordinance.

~~[(b)]~~ ~~The owner, operator, or proprietor of any bed and breakfast home shall, within nine months of December 28, 1989, establish to the satisfaction of the director that the use was in existence as of December 28, 1989, or shall cease its operation. The owner, operator, or proprietor shall have the burden of proof in establishing that the use is nonconforming. Documentation substantiating~~



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~~existence of a bed and breakfast home as of December 28, 1989 may include records of occupancy or tax documents, such as State of Hawaii general excise tax records, transient accommodations tax records, and federal and/or State of Hawaii income tax returns, for the year preceding December 28, 1989. Upon a determination that the use was in existence as of December 28, 1989, the director shall issue a nonconforming use certificate for the bed and breakfast home.~~

~~(e) Failure to obtain a nonconforming use certificate within nine months of December 28, 1989 shall mean that the alleged nonconforming use as of December 28, 1989, is not a bona fide nonconforming use, and shall not continue as a nonconforming use, but shall be treated as an illegal use.]~~

[(d)](b) The owner, operator, or proprietor of any bed and breakfast home who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate in accordance with the following schedule:

- (1) between September 1, 2000 and October 15, 2000; then
- (2) between September 1 and October 15 of every even-numbered year thereafter.

Each application to renew shall include proof that (i) there were in effect a State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming use for each calendar year covered by the nonconforming use certificate being renewed and that there were bed and breakfast occupancies (occupancies of less than 30 days apiece) for a total of at least 28 days during each such year and that (ii) there has been no period of 12 consecutive months during the period covered by the nonconforming use certificate being renewed without a bed and breakfast occupancy. Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificate. The requirement for the 28 days of bed and breakfast occupancies shall be effective on January 1, 1995 and shall apply to renewal applications submitted on or after January 1, 1996.

[(e)](c) ~~[Except those bed and breakfast homes which are nonconforming uses, and, after nine months from December 28, 1989, for which a nonconforming use certificate has been issued and renewed, as required, pursuant to this section, bed and breakfast homes are prohibited in all zoning districts.]~~ Section 21-5.350 relating to home occupations shall not apply to bed and breakfast homes.



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~~[(f)]~~(d) Those bed and breakfast homes for which a nonconforming use certificate has been issued and renewed, as required, pursuant to this section shall operate pursuant to the following restrictions and standards:

- (1) Detached dwellings used as bed and breakfast homes shall be occupied by a family and shall not be used as a group living facility. Rooming shall not be permitted in bed and breakfast homes.
- (2) No more than two guest rooms shall be rented to guests, and the maximum number of guests permitted within the bed and breakfast home at any one time shall be four.
- (3) There shall be no exterior signage that advertises or announces that the dwelling is used as a bed and breakfast home.
- (4) One off-street parking space shall be provided for each guest room, in addition to the required spaces for the dwelling unit.
- (5) The provisions of Section 21-5. (c) shall apply to advertisements for the bed and breakfast home.

~~[(g)]~~(e) The owner, operator, or proprietor of any bed and breakfast home who has obtained a nonconforming use certificate under this section shall display the certificate issued for the current year in a conspicuous place on the premises."

SECTION 9. Chapter 21, Article 5, Revised Ordinances of Honolulu 1990 ("Specific Use Development Standards"), is amended by adding a new section to be appropriately designated by the Revisor of Ordinances and to read as follows:

"Sec. 21-5. Bed and breakfast homes and transient vacation units.

- (a) Bed and breakfast homes and transient vacation units are permitted in the A-2 medium density apartment zoning district provided:
- (1) They are within 3,500 feet of a resort zoning district of greater than 50 contiguous acres; and
 - (2) The resort district and the A-2 district shall have been rezoned pursuant to the same zone change application as part of a master-planned resort community.



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- (b) In all zoning districts where bed and breakfast homes are permitted, except for the resort district, apartment precinct and resort mixed use precinct of the Waikiki special district, and the A-2 medium density apartment zoning district pursuant to subsection (a), and except as otherwise provided in subdivision (7), the following standards and requirements apply:
- (1) The owner or operator of a bed and breakfast home, including for purposes of this subdivision the trustee of a revocable trust that owns the subject property, shall register the bed and breakfast home with the department and shall submit the following in the initial application for registration:
- (A) Affirmation that the applicant of the bed and breakfast home is a natural person;
 - (B) Affirmation that the applicant does not hold a registration for or operate more than one bed and breakfast home or transient vacation unit in the city at one time;
 - (C) A valid current State of Hawaii general excise tax license and transient accommodations tax license for the subject property;
 - (D) Evidence of a real property tax home exemption for the subject property, and evidence that the applicant has a minimum 50 percent ownership interest in the subject property;
 - (E) An initial fee of \$100 for the bed and breakfast home;
 - (F) Evidence that the use as a bed and breakfast home is covered by an insurance carrier for the subject property;
 - (G) Confirmation that the bed and breakfast home is permitted by any applicable homeowners association, apartment owners association, or condominium property regime articles, by-laws, and house rules;
 - (H) An affidavit, signed by the owner, indicating that the owner does not own an interest in any other bed and breakfast home or transient vacation unit in the city; and
 - (I) A floor plan showing the location of guest rooms for a bed and breakfast home.



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- (J) For bed and breakfast homes located in the AG-2 general agricultural district, evidence that the portion of the subject property that is not being used as a residential homesite area, as defined in Section 8-7.3(a), is currently dedicated for a specific agricultural use pursuant to Section 8-7.3.
- (K) Evidence that a dwelling unit proposed for use as a bed and breakfast home:
 - (i) Is not an affordable unit subject to income restrictions;
 - (ii) Did not receive housing or rental assistance subsidies; and
 - (iii) Was not subject to an eviction within the last 12 months.
- (2) Registration renewal requirements. Annually, by August 30, the owner or operator of a bed and breakfast home, including for purposes of this subdivision the trustee of a revocable trust that owns the subject property, shall submit to the department:
 - (A) Affirmation that the applicant for the bed and breakfast home is a natural person;
 - (B) Affirmation that the applicant does not hold a registration for or operate more than one bed and breakfast home or transient vacation unit in the city at one time;
 - (C) Evidence of having paid State of Hawaii general excise taxes and transient accommodations taxes for the subject property;
 - (D) Evidence of a real property tax home exemption for the subject property;
 - (E) A renewal fee of \$2,000 for the bed and breakfast home;
 - (F) Evidence that the use as a bed and breakfast home is covered by an insurance carrier for the property;
 - (G) Confirmation that the bed and breakfast home is permitted by any applicable homeowners association, apartment owners association, or condominium property regime articles, by-laws, and house rules; and



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- (H) An affidavit, signed by the owner, indicating that the owner does not own an interest in any other bed and breakfast home or transient vacation unit in the city.
- (I) For bed and breakfast homes located in the AG-2 general agricultural district, evidence that the portion of the subject property that is not being used as a residential homesite area, as defined in Section 8-7.3(a), is currently dedicated for a specific agricultural use pursuant to Section 8-7.3.

The renewal of a registration for a bed and breakfast home will be granted upon receipt of an application meeting all requirements set forth in this section; provided that if complaints from the public indicate that noise created by guests disturbs residents of the neighborhood in which the bed and breakfast home is located, or where other good cause exists, the director may deny the renewal application.

- (3) Restrictions and Standards. Bed and breakfast homes must operate in accordance with the following restrictions and standards:
 - (A) Dwelling units in detached dwellings used as bed and breakfast homes must be occupied by a family, and renters of any room in the detached dwelling other than the bed and breakfast home guests are not permitted;
 - (B) No more than two guest rooms in a bed and breakfast home may be rented to guests, and a maximum of four guests are permitted within the bed and breakfast home at any one time;
 - (C) Functioning smoke and carbon monoxide detectors must be installed in each bedroom;
 - (D) House rules, including quiet hours between 10:00 p.m. and 8:00 a.m., and emergency contact information for the owner or operator must be provided to all guests and posted in conspicuous locations;
 - (E) When any guest room in a bed and breakfast home is being rented to guests, the owner or operator shall remain on the premises during quiet hours;



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- (F) The owner or operator shall maintain a current two-year registry setting forth the names and telephone numbers of all guests and the dates of their respective stays;
- (G) No exterior signage that shows the dwelling unit is used as a bed and breakfast home is allowed;
- (H) Registration as a bed and breakfast home is not transferable, and shall not run with the land;
- (I) Development Plan Area Density Limit. Excluding bed and breakfast homes in the resort district, apartment precinct and resort mixed use precinct of the Waikiki special district, and the A-2 medium density apartment zoning district pursuant to subsection (a), where there is no limit on the number of bed and breakfast homes allowed, the number of bed and breakfast homes permitted in each development plan area is limited to no more than one half of one percent of the total number of dwelling units in that development plan area. The total number of dwelling units in a development plan area will be based on the latest figures from the U.S. Census data. Where the initial number of bed and breakfast home applications for a development plan area exceeds the one half of one percent limitation, acceptance of applications will be selected on a lottery basis. When renewal applications fall below the one half of one percent limitation, new applications will be accepted on a lottery basis. The director shall adopt rules pursuant to HRS Chapter 91 to implement and administer the lottery; and
- (J) Multifamily Dwelling Density Limit. Excluding multifamily dwellings in the resort district, apartment precinct and resort mixed use precinct of the Waikiki special district, and the A-2 medium density apartment zoning district pursuant to subsection (a), unless otherwise specified in apartment bylaws, covenants, or correspondence from a homeowners association, apartment owners association, or condominium property regime, the total number of bed and breakfast homes and transient vacation units cannot exceed 50 percent of the units in a multifamily dwelling.
- (K) If a bed and breakfast home is located in the AG-2 general agricultural district, the portion of the subject property that is not being used as a residential homesite area, as defined in Section 8-7.3(a), must be currently dedicated for a specific agricultural use pursuant to Section 8-7.3.



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- (L) A bed and breakfast home must not be located within 1,000 feet of another bed and breakfast home or a transient vacation unit; provided that this spacing requirement:
- (i) Does not apply as between (1) bed and breakfast homes and transient vacation units in the resort district, apartment precinct or resort mixed use precinct of the Waikiki special district, or the A-2 medium density apartment zoning district pursuant to subsection (a), and (2) bed and breakfast homes located outside of those zoning districts and precincts; and
 - (ii) Does not preclude the continued operation of bed and breakfast homes operating under valid nonconforming use certificates pursuant to Section 21-4.110-2.
- (4) Upon reasonable notice, any bed and breakfast home must be made available for inspection by the department.
- (5) The violation of any provision of this subsection will be grounds for administrative fines and nonrenewal unless corrected before the renewal deadline. Recurring violations will result in denial of renewal requests.
- (6) This subsection does not apply to bed and breakfast homes operating under valid nonconforming use certificates pursuant to Section 21-4.110-2.
- (c) Advertisements.
- (1) Definitions. As used in this subsection:
- "Advertisement" means any sign; banner; written, graphic, or pictorial statement; or broadcast in English or any other language, used to publicize or offer for accommodation any dwelling unit or lodging unit, or portion thereof, or any other permanent or temporary habitable space within the city as a bed and breakfast home or transient vacation unit.
- "Person" means a judicial person or a natural person, and includes businesses, companies, associations, non-profit organizations, firms, partnerships, corporations, limited liability companies, and individuals.



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- (2) Prohibition. Advertisements for all bed and breakfast homes and transient vacation units are subject to this subsection.
- (A) It is unlawful for any person to advertise or cause the advertisement of a bed and breakfast home or transient vacation unit without including in the advertisement:
- (i) A current registration number obtained pursuant to this section, or nonconforming use certificate number obtained pursuant to Section 21-4.110-1 or Section 21-4.110-2; or
- (ii) For bed and breakfast homes or transient vacation units located in the resort district, apartment precinct or resort mixed use precinct of the Waikiki special district, or in the A-2 medium density apartment zoning district pursuant to subsection (a), the street address, including, if applicable, any apartment unit number, for that bed and breakfast home or transient vacation unit.
- (B) Upon receipt of a notice of violation, the advertisement must be removed within seven days. If the advertisement is not removed within seven days, a fine will be levied for each day the advertisement is on public display, as provided in subdivision (4).
- (C) The existence of an advertisement will be prima facie evidence that a bed and breakfast home or a transient vacation unit is being operated at the listed address. The burden of proof is on the owner of the subject real property to establish that the property is not being used as a bed and breakfast home or transient vacation unit, or that the advertisement was placed without the property owner's knowledge or consent.
- (3) Exemptions. The following are exempt from the provisions of this subsection.
- (A) Legally established hotels, whether owned by one person, or owned individually as unit owners but operating as a hotel as defined in Chapter 21, Article 10.
- (B) Legally established time-sharing units, as provided in Section 21-5.640.



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(C) Legally established dwelling units that are rented for periods of 30 consecutive days or more at any one time.

- (4) Penalties. Any person who violates any of the provisions of this subsection shall be fined not less than \$25,000 and not more than \$50,000 for each day that the advertisement is on public display beyond seven days from the date a notice of violation is received. Landowners, agents, or any other person associated with the property shall be liable for each violation, whether or not they are named in the advertisement."

SECTION 10. Section 21-5.640, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 21-5.640 Time sharing [~~and transient vacation~~] units.

Time sharing [~~and transient vacation~~] units [~~shall be~~] are permitted in the A-2 medium density apartment zoning district provided:

- (a) They are within 3,500 feet of a resort zoning district of greater than 50 contiguous acres; and
- (b) The resort district and the A-2 district shall have been rezoned pursuant to the same zone change application as part of a master-planned resort community."

SECTION 11. Table 21-6.1, Revised Ordinances of Honolulu 1990 ("Off-street Parking Requirements"), is amended by amending the "Commerce and Business" category to add an entry for "bed and breakfast homes" to read as follows:

"

Table 21-6.1 Off-street Parking Requirements	
Use ¹	Requirement ²
COMMERCE AND BUSINESS	
<u>Bed and breakfast homes⁷</u>	<u>1 per guest bedroom⁸</u>

"



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SECTION 12. The footnotes for Tables 21-6.1 ("Off-street Parking Requirements"), 21-6.2 ("Off-street Parking Requirements BMX 4 Central Business Mixed Use"), and 21-6.3 ("Off-street Parking Requirements Waikiki Special District"), Revised Ordinances of Honolulu 1990, are amended to read as follows:

"Notes:

1. Where a proposed use is not specifically listed above, or it falls under more than one use listed above, the director will review the proposed use and, based on the characteristics of the use, determine its equivalent and applicable off-street parking and loading requirements.
2. All references to square feet refer to floor area.
3. Parking standards for individual uses shall prevail if they are not part of a commercial use that meets the definition of "shopping center."
4. Where a proposed use is not specifically listed above, or it falls under more than one use listed above, the director will review the proposed use and, based on the characteristics of the use, determine its equivalent and applicable off-street parking and loading requirements for the BMX-4 district.
5. All references to square feet refer to floor area.
6. Where a proposed use is not specifically listed above, or it falls under more than one use listed above, the director will review the proposed use and, based on the characteristics of the use, determine its equivalent and applicable off-street parking and loading requirements for the Waikiki special district.
7. Excluding bed and breakfast homes in the resort district, apartment precinct and resort mixed use precinct of the Waikiki special district, and the A-2 medium density apartment zoning district pursuant to section 21-5. (a), and bed and breakfast homes operating under valid nonconforming use certificates pursuant to Section 21-4.110-2.
8. This requirement is in addition to the off-street parking requirement applicable to the dwelling unit being used as a bed and breakfast home."



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SECTION 13. Table 21-9.6(A), Revised Ordinances of Honolulu 1990 ("Waikiki Special District Precinct Permitted Uses and Structures"), is amended:

- a. By adding a "bed and breakfast homes" entry and revising the "transient vacation units" entry to read as follows:

Table 21-9.6(A)
Waikiki Special District Precinct
Permitted Uses and Structures

Use or Structure	Precinct		
	Apartment	Resort Mixed Use	Public
<u>Bed and breakfast homes</u>	<u>P/c</u>	<u>P/c</u>	
Transient vacation units		[P] <u>P/c</u>	

- b. By amending the "Ministerial uses" note to the table to read as follows:

"Ministerial uses:

- Ac = Special accessory use. Also see: Article 10, Accessory use; and Section 21-5.330, Home occupations
- P = Permitted principal use
- P9 = Permitted principal use subject to standards enumerated in Article 9; see Section 21-9.80-5(d), 21-9.80-6(d), or 21-9.80-8(d)
- P-AMX = Within the apartment precinct, a permitted principal use only within the apartment mixed use subprecinct
- P/c = Permitted use subject to standards in Article 5

SECTION 14. Chapter 41, Revised Ordinances of Honolulu 1990 ("Regulated Activities Within the City"), is amended by adding a new article to be appropriately designated by the Revisor of Ordinances and to read as follows:

"Article __. Hosting Platforms

Sec. 41-___.1 Definitions.

As used in this article:

"Bed and breakfast home" has the same meaning as defined in Chapter 21, Article 10.



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"Booking service" means any reservation or payment service provided by a person that facilitates a transaction between an owner, operator, or proprietor of a bed and breakfast home or transient vacation unit, and a prospective user of that bed and breakfast home or transient vacation unit, and for which the person collects or receives, directly or indirectly through an agent or intermediary, a fee in connection with the reservation or payment services provided for by the transaction.

"Department" means the department of planning and permitting.

"Director" means the director of planning and permitting.

"Hosting platform" means a person that collects or receives a fee for booking services through which an owner, operator, or proprietor of a bed and breakfast home or transient vacation unit may offer use of the bed and breakfast home or transient vacation unit. Hosting platforms typically, but not necessarily, provide booking services through an online platform that allows the owner, operator, or proprietor to advertise the bed and breakfast home or transient vacation unit through a website provided by the hosting platform, and the hosting platform conducts a transaction by which potential users arrange the use of and payment for the bed and breakfast home or transient vacation unit, whether the payment is made directly to the owner, operator, or proprietor, or to the hosting platform.

"Person" means a judicial person or a natural person, and includes businesses, companies, associations, non-profit organizations, firms, partnerships, corporations, limited liability companies, and individuals.

"Transient vacation unit" has the same meaning as defined in Chapter 21, Article 10."

Sec. 41-____.2 Legislative Intent.

It is the legislative intent of the council to increase transparency and accountability for hosting platforms providing booking services for bed and breakfast homes and transient vacation units located within the city.

Sec. 41-____.3 Booking Services.

- (a) It shall be unlawful for a person acting as, or on behalf of, a hosting platform to provide, and collect or receive a fee for, booking services in connection with any bed and breakfast home or transient vacation unit located within the city if such bed and breakfast home or transient vacation unit is not lawfully registered, permitted, or otherwise allowed as a bed and breakfast home or transient



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vacation unit, as applicable, under Chapter 21 at the time the bed and breakfast home or transient vacation unit is rented.

- (b) Hosting platforms shall not collect or receive a fee, directly or indirectly through an agent or intermediary, for facilitating or providing services ancillary to a vacation rental or unregistered home-share, including, but not limited to, insurance, concierge services, catering, restaurant bookings, tours, guide services, entertainment, cleaning, property management, or maintenance of the residential property or unit.

Sec. 41-____.4 Registration.

- (a) It shall be unlawful for any hosting platform to provide booking services to operators of bed and breakfast homes located within the city or transient vacation units located within the city without first registering with the department. In order to register, a hosting platform shall provide a hosting platform registration statement to the director, in a form prescribed by the department, pay a registration fee of \$_____, and agree in writing:
- (1) To obtain written consent from all of its operators of bed and breakfast homes located within the city and operators of transient vacation units located within the city for the disclosure of the information required under Section 41-____.5; and
 - (2) To furnish such information to the city in accordance with Section 41-____.5.
- (b) A hosting platform may cancel its registration under this section by delivering written notice of cancellation to the director. The director may cancel a hosting platform's registration under this section for cause, including any violation of this article, by delivering written notice of cancellation to the hosting platform no later than 90 days prior to the effective date of cancellation. Nothing in this section shall relieve the operator of a bed and breakfast home or transient vacation unit located within the city from the separate registration obligations under Section 21-5.____.

Sec. 41-____.5 Reporting.

- (a) All hosting platforms registered pursuant to Section 41-____.4 shall report to the director on a monthly basis, on the date and in the electronic format specified by the director, for each bed and breakfast home and transient vacation unit located



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within the city for which the hosting platform provided booking services in the preceding month:

- (1) The name, address, and transient accommodations registration identification number of the operator of such bed and breakfast home or transient vacation unit pursuant to HRS Section 234D-4;
 - (2) The address of the bed and breakfast home or transient vacation unit and the associated registration number pursuant to Section 21-5. ____; and
 - (3) The number of nights each bed and breakfast home or transient vacation unit was rented and the rate or price at which it was rented.
- (b) The director may disclose such information to the appropriate state or city officials to ensure compliance with this article, state tax laws and county tax ordinances, and any applicable land use laws and ordinances.

Sec. 41-____.6 Penalties.

A violation of this article may result in a civil penalty of not less than \$25,000."

SECTION 15. An owner, operator, or proprietor of a transient vacation unit or a bed and breakfast home who holds a valid nonconforming use certificate issued pursuant to Sections 21-4.110-1 or 21-4.110-2 on the effective date of this ordinance shall be allowed to continue to operate the transient vacation unit or bed and breakfast home and renew the nonconforming use certificate pursuant to those respective sections. The owner, operator, or proprietor of the transient vacation unit or the bed and breakfast home shall cease its operation upon the expiration and nonrenewal of the nonconforming use certificate, provided that the owner, operator, or proprietor of a bed and breakfast home may thereafter apply to register the bed and breakfast home pursuant to the provisions of this ordinance.

SECTION 16. In SECTIONS 2 through 13 of this ordinance, material to be repealed is bracketed and stricken. New ordinance material is underscored. When revising, compiling or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the Revisor of Ordinances need not include the brackets, the material that has been bracketed and stricken, or the underscoring. The Revisor of Ordinances shall, pursuant to the Revisor's authority under ROH Section 1-16.3(b)(1), replace the phrase "effective date of this ordinance" or similar phrase used in the codified language of this ordinance with the actual date on which the ordinance takes effect.



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL 89 (2018), CD2

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SECTION 17. Severability. If any provision of this ordinance, or the application thereof to any person or circumstances, is held invalid, the invalidity does not affect other provisions or applications of the ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 18. This ordinance takes effect on November 1, 2019.

INTRODUCED BY:

Ernest Martin (br)

DATE OF INTRODUCTION:

November 15, 2018
Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20 _____.

KIRK CALDWELL, Mayor
City and County of Honolulu